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87-871 (1)

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
CLERK

Docket Number_____

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1987

In the Matter of the Application of
Ernest A. Hunter,
Appellant

v.

Judge Edward M.Murray, A Judge of the
Court of Claims, Justice Building in the
City and County of Albany, New York;

New York State Department of Civil Service,
et al.;

The State of New York, Appellees.

Appeal from the Court of Appeals
of The State of New York

JURISDICTIONAL STATEMENT

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52 pp

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United Sates;

The appellant appeals from a final Order of the Court of Appeals of the State of New York denying the appellant's request to them for relief as follows:

QUESTIONS INVOLVED ON APPEAL

I. Whether, as a matter of Federal Constitutional Law, the Court below has construed the Judiciary Law; Civil Practice Law and Rules in such a manner as to allow the mandated Order of Criminal Contempt and summary fine to continue to abridge the appellant's Rights as protected by the Fourteenth Amendment, Section I (Due Process, Equal Protection Clauses)?

II. Whether, as a matter of Federal Constitutional Law, the Court below has construed the laws which govern the rights of the appellant, to file claims for salary due, in such a manner as to allow for an abridgement of the appellant's rights as protected by the Fourteenth Amendment, Section I (Due Process, Equal Protection Clauses)?

III. Whether, as a matter of Federal Constitutional Law, the Court below has construed the laws which govern the Rights of the appellant, to file a future claim for salary due, in such a manner as to allow for an abridgement of the appellant's Rights as protected by the First Amendment (Freedom of Speech Provision) and embraced within the Fourteenth Amendment?

IV. Whether, as a matter of State Constitutional Law, the Court below has construed the Judiciary Law; Civil Practice Law and Rules in such a manner as to allow the mandated Order of Criminal Contempt and summary fine to continue to abridge the appellant's Rights as protected by Article I (Sections 6, 8 and 11) and protected by the Federal Constitution (Fourteenth Amendment)?

V. Whether, as a matter of State Constitutional Law, the Court below has construed the laws which govern the rights of the appellant, to file claims for salary due, in such a manner as to allow for an abridgement of the appellant's Rights as protected by Article I (Sections 6 and 11) and protected by the Federal

Constitution (Fourteenth Amendment)?

VI. Whether, as a matter of State Constitutional Law, the Court below has construed the laws which govern the rights of the appellant, to file a future claim for salary due, in such a manner as to allow for an abridgement of the appellant's Rights as protected by Article I (Section 6, 8 and 11) and protected by the Federal Constitution (Fourteenth Amendment)?

VII. Whether, as a matter of State Statutory Law, the Court below has construed the Court of Claims Act; Judiciary Law; Civil Service Law; State Finance Law; Civil Practice Law and Rules in such a manner as to allow a continued abridgement of the appellant's Rights protected thereunder and protected by the Federal Constitution (Fourteenth Amendment)?

PROPER PARTIES

The parties to this appeal are as they are in the caption and were listed in the Court below; unless disclosure determines, additional parties should be joined.

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OFFICIAL REPORT

The Court of Appeals' Order, entered September 3, 1987 affirming the Appellate Division's Order, has not been reported officially.

The Appellate Division's Order, entered May 11, 1987 affirming the Supreme Court's Ordered Judgment, has been reported officially in 130AD2d836(1987).

The Supreme Court's Ordered Judgment, entered June 16, 1986 affirming the Ordered Judgment of the Court of Claims entered December 31, 1985, has not been reported officially.

UNOFFICIAL REPORT

The Court of Appeals' Order, entered September 3, 1987 affirming the Appellate Division's Order, has not been reported unofficially.

The Appellate Division's Order, entered May 11, 1987 affirming the Supreme Court's Ordered Judgment, has been reported unofficially in 515NYS2d160 (May 7, 1987).

The Supreme Court's Ordered Judgment, entered June 16, 1986 affirming the Ordered Judgment of the Court of Claims entered December 31, 1985, has not been reported unofficially.

STATEMENT OF THE GROUNDS FOR JURISDICTION

(i) This proceeding was commenced under Article 78 of the Civil Practice Law and Rules to provide the Venue Jurisdiction for Article 19 of the Judiciary Law, Section 752; the appellant had requested the Supreme Court, Special Term, Part I, Third Judicial Department, to review the Summary Criminal Contempt Order of the Court of Claims, Albany, New York, fining the appellant the sum of two hundred fifty dollars ($250.00) with the proviso that he not process any future claims for salary due to him. The Summary Criminal Contempt Order was mandated against the appellant because he had requested the Court of Claims to vacate its previous judgment on approximately three prior occasions.

(ii) The Court of Appeals of the State of New York entered an Order on the 3rd day of September, 1987. The Notice of Appeal was filed in the Supreme Court, Albany County Court House; the

Court of Claims, Albany, New York and the Court of Appeals, Albany, New York on the 13th day of October, 1987 by the United States Post Office, first-class postage prepaid. The Court of Appeals acknowledges receipt of the Notice of Appeal effective October 16, 1987; the Supreme Court and the Court of Claims acknowledge reciept of the Notice of Appeal.

(iii) The Supreme Court of the United States is requested to take cognizance of this appeal by virtue of the provision of 28 USC 1257(2); alternatively, if the Supreme Court concludes that this cause will not lie as an appeal, then, a request is simultaneously made that a petition for a writ of certiorari, pursuant to the provision which obtains in 28 USC 1257(3) as is embraced in 28 USC 2103 of Chapter 133, shall issue to the Court of Appeals of the State of New York.

CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS

1. Federal Constitution:

(a) First Amendment: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

(b) Fourteenth Amendment, Section 1: "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."****

2. Federal Statutes:

(c) 28 USC, Section 1257(2)(3):****
"(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United Sta' s, and the decision is in favor of its validity."
"(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privileges or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.
"For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals."

(d) 28 USC, Section 2103: "If an appeal to the Supreme Court is improvidently taken from the decision of the highest court of a State, or of a United States court of appeals, in a case where the proper mode of review is by petition for certiorari, this alone shall

not be ground for dismissal; but the papers whereon the appeal was taken shall be regarded and acted on as a petition for writ of certiorari and as if duly presented to the Supreme Court at the time the appeal was taken. Where in such a case there appears to be no reasonable ground for granting a petition for writ of certiorari it shall be competent for the Supreme Court to adjudge to the respondent reasonable damages for his delay, and single or double costs."

3. State Constitution:

(e) Article I, Section 6: "No person shall be held to answer for a capital or otherwise infamous crime (except in cases of impeachment, and in cases of militia when in actual service, and the land, air and naval forces in time of war, or which this state may keep with the consent of congress in time of peace, and in cases of petit larceny, under the regulation of the legislature), unless on indictment of a grand jury, except that a person held for the action of a grand jury upon a charge for such an offense, other than one punishable by death or life imprisonment, with the consent of the district attorney, may waive indictment by a grand jury and consent to be prosecuted on an information filed by the district attorney; such waiver shall be evidenced by written instrument signed by the defendant in open court in the presence of his counsel. In any trial in any court whatever the party accused shall be allowed to appear and defend in person and with counsel as in civil actions and shall be informed of the nature and cause of the accusation and be confronted with the witnesses against him. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he be compelled in any criminal case to be a witness against himself, providing, that any public officer who, upon being called before a grand jury to testify concerning the conduct of his present office or of any public office held by him within five years prior to such grand jury call to testify, or the performance of his official duties in any such present or prior offices, refuses to sign a waiver of immunity against subsequent criminal prosecution, or to answer any relevant question concerning such matters before such grand jury, shall by virtue of such refusal, be disqualified from holding any other public office or public employment for a period of five years from the

date of such refusal to sign a waiver of immunity against subsequent prosecution, or to answer any relevant question concerning such matters before such grand jury, and shall be removed from his present office by the appropriate authority or shall forfeit his present office at the suit of the attorney- general.

The power of grand juries to inquire into the wilful misconduct in office of public officers, and to find indictments or to direct the filing of informations in connection with such inquiries, shall never be suspended or impaired by law.

No person shall be deprived of life, liberty or property without due process of law."

(f) Article I, Section 8: "Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions or indictments for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact."

(g) Article I, Section 11: "No person shall be denied the equal protection of the laws of this state or any subdivision thereof. No person shall, because of race, color, creed or religion, be subjected to any discrimination in his civil rights by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state."

(h) Article VI, Section 3b(1):****"In civil cases and proceedings as follows:

(1) As of right, from a judgment or order entered upon the decision of an appellate division of the supreme court which finally determines an action or special proceeding wherein is directly involved the construction of the constitution of the state or of the United States, or where one or more of the justices of the appellate division dissents from the decision of the court, or where the judgment or order is one of reversal or modification.****."

4.State Statutes: Court of Claims Act:—

(i) Section 9, Sub-Section 8: "The court shall have jurisdiction: ****

8. To open defaults; to vacate, amend, correct, or modify any process, claim, order or judgment, in furtherance of justice for any error in form or substance; before entry of judgment, to reopen a trial and permit submission of further evidence; to grant a new trial upon any grounds for which a new trial may be granted in the supreme court.****."

Judiciary Law:

(j) Article 19, Section 752: "Where a person is committed for contempt, as prescribed in seven hundred fifty -one, the particular circumstances of his offense must be set forth in the mandate of commitment. Such mandate, punishing a person summarily for a contempt committed in the immediate view and presence of the court, is reviewable by a proceeding under article seventy-eight of the Civil Practice Law and Rules."

Civil Practice Law and Rules:

(k) Article 78, Section 7801(2): "Relief previously obtained by writ of certiorari to review, mandamus or prohibition shall be obtained in a proceeding under this article. Wherever in any statute reference is made to a writ or order of certiorari, mandamus or prohibition, such reference shall, so far as applicable, be deemed to refer to the proceeding authorized by this article. Except where otherwise provided by law, a proceeding under this article shall not be used to challenge a determination: ****

2. which was made in a civil action or criminal matter unless it is an order summarily punishing a contempt committed in the presence of the court."

(l) Article 56, Section 5601(b)1: "****An appeal may be taken to the court of appeals as of right:

1. from an order of the appellate division which finally determines an action where there is directly involved the construction of the constitution of the state or of the United States; and ****."

(m) Article 32, Section 3211(b): "****A party may move for judgment dismissing one or more defenses, on the ground that a defense is not stated or has no merit.****."

(n) Article 31, Section 3102(f): "****In an action in which the state is properly a party, whether as plaintiff, defendant or otherwise, disclosure by the state shall be available as if the state

were a private person, except that it may not include interrogatories or requests for admissions."

(o) Article 30, Section 3003: "The commencement or maintenance of an action for the recovery of payments which have become due under the terms of a written agreement providing for the payment of a pension or retirement compensation or deferred compensation for a period of years or for life, whether or not such agreement is part of an employment contract, shall not be deemed to bar subsequent actions to recover payments thereafter becoming due under the terms of such agreement." [by analogy only]

(p) Article 2, Section 217: "Unless a shorter time is provided in the law authorizing the proceeding, a proceeding against a body or officer must be commenced within four months after the determination to be reviewed becomes final and binding upon the petitioner or the person whom he represents in law or in fact, or after the respondent's refusal, upon the demand of the petitioner or the person whom he represents, to perform its duty; or with leave of the court where the petitioner or the person whom he represents, at the time such determination became final and binding upon him or at the time of such refusal, was under a disability specified in section 208, within two years after such time."

(q) Article 1, Section 103(a)(b)(c): "(a) There is only one form of civil action. The distinctions between actions at law and suits in equity, and the forms of those actions and suits, have been abolished."

"(b) All civil judicial proceedings shall be prosecuted in the form of an action, except where prosecution in the form of a special proceeding is authorized. Except where otherwise prescribed by law, procedure in special proceedings shall be the same as in actions, and the provisions of the civil practice law and rules applicable to actions shall be applicable to special proceedings."

"(c) If a court has obtained jurisdiction over the parties, a civil judicial proceeding shall not be dismissed solely because it is not brought in the proper form, but the court shall make whatever order is required for its proper prosecution."

Civil Service Law; Rules and Regulations:

(r) Article 7, Section 96: "No public officer nor any employee acting for a public officer shall require a candidate for employment to sign any document whereby such candidate for employment waives any right or rights accruing to him under this chapter."

(s) Article 5, Section 81.7: "****Notwithstanding any other provisions of this chapter, the civil service department or appropriate municipal commission may disqualify for reinstatement and remove from a preferred list the name of any eligible who is physically or mentally disabled for the performance of the duties of the position for which such list is established, or who has been guilty of such misconduct as would warrant his dismissal from the public service, execpt that a partially physically handicapped person, who is suspended pursuant to section eighty of this chapter because of lack of work, but who, within six months of the date of his suspension, is certified for reinstatement to any job item having the same physical requirements as the job item from which the person was suspended shall not be disqualified because of his physical handicap unless a medical examination discloses that because his handicap has become greater he would not be able to satisfactorily perform in such job item. No person shall be disqualified pusuant to this subdivision unless he is first given a written statement of the reasons therefor and an opportunity for a hearing at which such reasons shall be established by appropriate evidence, and at which such person may be represented by counsel and present evidence. The civil service department or municipal commission may designate a person to hold such hearing and report thereon."

(t) Article 5, Section 80.1,.7:"1. Suspension or demotion. Where, because of economy, consolidation or abolisition of functions, curtailment of activities or otherwise, positions in the competitive class are abolished or reduced in rank or salary grade, suspension or demotion, as the case may be, among incumbents holding the same or similar positions shall be made in the inverse order of original appointment on a permanent basis in the classified service in the service of the governmental jurisdiction in which such abolition or reduction of positions occurs, subject to the provisions of subdivision seven of section eighty-five of this chapter; provided, however, that the date of original appointment of any such incumbent who was transferred to such governmental jurisdiction from another govermental jurisdiction upon the

transfer of functions shall be the date of original appointment on a permanent basis in the classified service in the service of the governmental jurisdiction from which such transfer was made. Notwithstanding the provisions of the subdivision, however, upon the abolition or reduction of positions in the competitive class, incumbents holding the same or similar positions who have not completed their probationary service shall be suspended or demoted, as the case may be, before any permanent incumbents, and among such probationary employees the order of suspension or demotion shall be determined as if such employees were permanent incumbents."

****

"7. Displacement in the state service. A permanent incumbent of a position in the state service in a specific title to which there is a direct line of promotion who is suspended or displaced pursuant to this section, together with all other such incumbents suspended or displaced at the same time, shall displace, in the inverse order of the order of suspension or demotion prescribed in subdivisions one and two of this section, incumbents serving in positions in the same layoff unit in the next lower occupied title in direct line of promotion who shall be displaced in the order of suspension or demotion prescribed in subdivisions one and two of this section; provided, however, that no incumbent shall displace any other incumbent having greater retention standing. If a permanent incumbent of a position in the state service is suspended or displaced from a position in a title for which there are no lower level occupied positions in direct line of promotion, he shall displace the incumbent with the least retention right pursuant to subdivisions one and two of this section who is serving in a position in the title in which the displacing incumbent last served on a permanent basis prior to service in one or more positions in the title from which he is suspended or displaced, if: (1) the service of the displacing incumbent while in such former title was satisfactory and (2) the position of the junior incumbent is in (a) the competitive class, (b) the layoff unit from which the displacing incumbent was suspended or displaced, and (c) a lower salary grade than the position form which the displacing incumbent is suspended or displaced; provided, however, that no incumbent shall displace any other incumbent having greater retention

standing. Refusal of appointments to a position afforded by this subdivision constitutes waiver of rights under this subdivision with respect to the suspension or displacement on account of which the refused appointment is afforded. The state civil service commission shall promulgate rules to implement this subdivision including rules which may provide adjunctive opportunities for displacement either to positions in direct line of promotion or to formerly held positions; provided, however, that no such rule shall permit an incumbent to displace any other incumbent having greater retention standing. For the purpose of acquiring preferred list rights, displacement pursuant to this subdivision is the equivalent of suspension or demotion pursuant to subdivision one of this section.".****

(u) Article 5, Section 75.1(a),.2,.3: "1. Removal and other disciplinary action. A person described in paragraph (a), or paragraph (b), or paragraph (c), or paragraph (d), or paragraph (e) of this subdivision shall not be removed or otherwise subjected to any disciplinary penalty provided in this section except for incompetency or misconduct shown after a hearing upon stated charges pursuant to this section."

"(a) A person holding a position by permanent appointment in the competitive class of the classified civil service, or" ****

"2. Procedure. A person against whom removal or other disciplinary action is proposed shall have written notice thereof and of the reasons therefor, shall be furnished a copy of the charges preferred against him and shall be allowed at least eight days for answering the same in writing. The hearing upon such charges shall be held by the officer or body having the power to remove the person against whom such charges are preferred, or by a deputy or other person designated by such officer or body in writing for that purpose. In case a deputy or other person is so designated, he shall, for the purpose of such hearing, be vested with all the powers of such officer or body and shall make a record of such hearing which shall, with his recommendations, be referred to such officer or body for review and decision. The person or persons holding such hearing shall, upon the request of the person against whom charges are preferred, permit him to be represented by counsel, or by a representative of a recognized or certified employee organization, and shall allow him to summon

witnesses in his behalf. The burden of proving incompetency or misconduct shall be upon the person alleging the same. Compliance with technical rules of evidence shall not be required."

"3. Suspension pending determination of charges; penalties. Pending the hearing and determination of charges of incompetency or misconduct, the officer or employee against whom such charges have been preferred may be suspended without pay for a period not exceeding thirty days. If such officer or employee is found guilty of the charges, the penalty or punishment may consist of a reprimand, a fine not to exceed one hundred dollars to be deducted from the salary or wages of such officer or employee, suspension without pay for a period not exceeding two months, demotion in grade and title, or dismissal from the service; provided, however, that the time during which an officer or employee is suspended without pay may be considered as part of the penalty. If he is acquitted, he shall be restored to his position with full pay for the period of suspension less the amount of any unemployment insurance benefits he may have received during such period. If such officer or employee is found guilty, a copy of the charges, his written answer thereto, a transcript of the hearing, and the determination shall be filed in the office of the department or agency in which he has been employed, and a copy thereof shall be filed with the civil service commission having jurisdiction over such position. A copy of the transcript of the hearing shall, upon request of the officer or employee affected, be furnished to him without charge."****

(v) Article 4, Section 50.1,.4: "1. Positions subject to competitive examinations. The merit and fitness of applicants for positions which are classified in the competitive class shall be ascertained by such examinations as may be prescribed by the state civil service department or the municipal commission having jurisdiction."****

"4. Disqualification of applicants or eligibles. The state civil service department and municipal commissions may refuse to examine an applicant, or after examination to certify an eligible

(a) who is found to lack any of the established requirements for admission to the examination or for appointment to the position for which he applies; or

(b) who is found to have a physical or mental disability which

renders him unfit for the performance of the duties of the position in which he seeks employment, which may reasonably be expected to render him unfit to continue to perform the duties of such position; or

(c) Repealed

(d) who has been guilty of a crime; or

(e) who has been dismissed from a permanent position in the public service upon stated written charges of incompetency or misconduct, after an opportunity to answer such charges in writing, or who has resigned from, or whose service has otherwise been terminated in, a permanent or temporary position in the public service, where it is found after appropriate investigation or inquiry that such resignation or termination resulted from his incompetency or misconduct; or

(f) who has intentionally made a false statement of any material fact in his application; or

(g) who has practiced, or attempted to practice, any deception or fraud in his application, in his examination, or in securing his eligibility or appointment; or

(h) who has been dismissed from private employments because of habitually poor performance.

No person shall be disqualified pursuant to this subdivision unless he has been given a written statement of the reasons therefor and afforded an opportunity to make an explanation and to submit facts in opposition to such disqualification.

Notwithstanding the provisions of this subdivision or any other law, the state civil service department or appropriate municipal commission may investigate the qualifications and background of an eligible after he has been appointed from the list, and upon finding facts which if known prior to appointment, would have warranted his disqualification, or upon a finding of illegality, irregularity or fraud of a substantial nature in his application, examination or appointment, may revoke such eligible's certification and appointment and direct that his employment be terminated, provided, however, that no such certification shall be revoked or appointment terminated more than three years after it is made, except in the case of fraud."****

(w) Part 55, Section 55.3: "The director of examinations or his designee may, by appropriate notice, invite candidate review of and the submission of objections with respect to a tentative rating

key for short-answer written tests constituting all or part of an examination for the purpose of enabling a committee on appeals to recommend a final rating key which, upon approval by the commission, shall be applicable to all candidates. Such review may, but need not be limited to locations in Albany, Buffalo and New York City. The eligible list may be established pending consideration of the rating key by the commission, in which event objections to the tentative rating key filed by candidates shall constitute appeals to the commission. Every candidate shall be granted an opportunity to inspect his scored answer papers, or a photographic copy thereof, and the rating key and scoring tables in order to detect any errors in the application of such rating key to his answer sheet."

State Finance Law

(x) Article 14, Section 200.1: "The salaries of all officers of the state, and the wages of all employees thereof shall be due from and payable by the state by-weekly, commencing with the fiscal year of the state beginning April first, nineteen hundred fifty-six.

Nothing contained in this section shall prevent the staggering of payments of salaries and wages on different days of the bi-weekly periods for administrative convenience. The section shall not be construed to apply to the members of the faculties, supervising staffs and other employees of the New York state colleges, schools and experiment stations administered by Cornell university and Alfred university."****

STATEMENT OF THE CASE

The appellant is a citizen of the United States and a resident of the State of New York, residing at 2816 8th Avenue, New York, New York 10039. He completed educational requirements for Bachelor of Science and Bachelor of Laws degrees at Florida Agricultural and Mechanical University. He has been a member of the New York State Employees' Retirement System since March 30, 1964, having transferred his membership from the New York City Retirement System. The appellant served in the Army of the United States from January, 1952 until October, 1953. The appellant was employed by the State of New York as a permanent Narcotic Parole Officer effective March 30, 1970, in the competitive class and promoted to Senior Narcotic Parole Officer effective October 12, 1972. Due to de-emphasis in drug programing, the appellant was reduced from Senior Narcotic Parole Officer, effective October 6, 1976, retroactive to August, 1976, to Narcotic Parole Officer; the appellant was reduced from Narcotic Parole Officer to Drug Abuse Treatment Specialist I effective January, 1977. The agency has now become almost extinct.

The appellant, on or about July 20, 1978, relieved himself from work at Manhattan Community Based Center to sick leave due to loss of weight. The appellant sought to be restored to the payroll of the State of New York on or about December, 1978 after his weight had stabilized to about its normal weight of one hundred thirty-five (135) pounds from the one hundred and nineteen (119) pounds to which it had dropped at the time he absented himself from work, on sick leave. The appellant was directed to take examinations, during the month of January, 1979, before clearance could be had to actuate the procedure for his return. The appellant complied with those requests and subsequent requests to keep medical and other appointments. Please note that at all times, the appellant has averred his willingness to keep all appointments made pursuant to current lawful policy. After an inordinate delay, the appellate was advised officially by letter, dated March 19, 1979, signed by Mr. John Debes, Personnel Administrator, that he had failed the medical examination given by Dr. Fleisher, Associate Physician of the Employee Health

Service on January 9, 1979 and the psychiatric examination given on January 16, 1979 by Dr. Singer. Dr. Francisco F. Merino examined the appellant February 14, 1980; his diagnosis was that the appellant had "Long Standing Schizophrenic Paranoid Reaction with elements of deterioration." The appellant has not to this date been given specific reasons for the determination reached which restrains the appellant from his right to return to work (e.g., the Appellees have the burden of producing instances of incompetent acts committed or omissions by the appellant which have reduced the appellant's effectiveness as a civil servant and sustaining those alleged derelictions at a hearing at which the appellant will have an opportunity to rebut the charges made, the hearing must be given by the Appellees within a thirty day period if they do not choose to pay the persons so charged). The Appellees have not charged the appellant with any wrong doings, except for the general conclusions reached by Dr. Merino and these conclusions are of a medical nature. The failure of psychiatric and physical examinations given by the agents of the Appellees, if it cannot be shown at a hearing that this failure effectuates some irreparable dysfunction, as it relates to the employment of the appellant, during its existence, is not adequate cause to deprive the appellant of his valid constitutional right to employment with the State of New York. The appellant's effectiveness as a worker must be questioned by charges of misconduct or by lack of compliance with a substantial portion of the rules and regulations by which he was governed. The Appellees cannot sustain such charges against the appellant. The appellant avers that he did his job better than in a manner of substantial compliance.

The appellant has made many attempts to resolve the matter amicably. Since being advised by the Civil Service Commission of their determination to render him ineligible to be restored to the payroll of New York State, the appellant was a frequent visitor to the New York City Office of the Civil Service Commission making oral appeals to the personnel at that location to intercede in the resolution of the matter. These efforts were continued until the appellant was advised by Mr. Morton Stevenson, District Supervisor, the appellant's presence was no longer acceptable at that office.

The appellant took an examination, on or about December, 1979, for Probation Program Consultant. An appeal was taken from a notice that he had failed the examination. The appellant received a reply, dated June 24, 1980, indicating that his final score was 66. It had come to the attention of the appellant that one review group of the examination candidates had the benefit of the examination questions and answers and their answer sheet with which they had an opportunity to rebut the Civil Service Commission's established answer before the grading of the examination, whereas, the appellant was afforded only his answer sheet to compare with the established Civil Service Commission's answer after the grading of the examination.

The appellant, since on or about March, 1979, when he received the correspondence from Mr. John Debes, had requested a determination regarded as official upon which he might appeal. On or about March, 1980, he received a "Notice of Determination" advising him that his name would be removed from the Parole Officer's Preferred List because he had failed a psychiatric examination, which directed that an appeal might be effected pursuant to Section 50.4 of the Civil Service Law within thirty (30) days from March 12, 1980. The appellant took an appeal from said "Notice of Determination", within the thirty (30) day limitation of time provision. The appellant's medical contacts with Columbia Presbyterian Hospital and Corporate Health Examiners (formerly DBA, Life Extension Institute) have not found the appellant to have any dysfunctional medical problems, before and after the receipt of the "Notice of Determination" from the Employee Health Service.

Since on or about May 22, 1980, the appellant has appealed his cause before the Courts of the State of New York or the United States Supreme Court (i.e., Index Number:10216/80 in the Supreme Court New York County [as reported in the New York Law Journal, page 6, second column, July 23, 1980], Motion Number:3144 in the Appellate Division [as reported in 51NY2d708, September 30, 1980], Motion Number:1128 in the Court of Appeals [as reported in 51NY2d910, 434NYS2d992, 415NE2d980, November 11, 1980], Docket Number:80-1327 in the Supreme Court of the United States [as reported in 450US999,

68L.Ed2d200, 101aS.Ct1705, March 23, 1981]; Index Number:7434/81 in the Supreme Court New York County; Index Number:12370/81 in the Supreme Court New York County, appealed to the Appellate Division [as reported in 85AD2d937, 447NYS2d574, December 17, 1981] and the Court of Appeals [as reported in 55NY2d1036, 449NYS2d1031, 434NE2d1082, February 16, 1982], Docket Number:81-1785 in the Supreme Court of the United States [as reported in 456US985, 73L.Ed2d1280, 102aS.Ct2263, May 24, 1982], Claim Number:67074 in the Court of Claims; Claim Number:69881 in the Court of Claims; Motion Number:M-32879 in the Court of Claims; Motion Number:M-33267 in the Court of Claims; Motion Number:M-33750 in the Court of Claims; Index Number:510-86 in the Supreme Court Albany, County, appealed to the Appellate Division, File Number:53779[as reported in 130AD2d836, 515NYS2d160, May 7, 1987] and the Court of Appeals).

After the Order of the United States Supreme Court was issued on May 24, 1982, the appellant submitted claims for wages due in the Court of Claims Albany, New York:

"Claim Number:67074" was dismissed effective January 27, 1983; the Court of Claims concluded that the appellant had been derelict and had not pursued his remedy in an Article 78 Proceeding pursuant to the rule of law laid down in the case of Austin v. Board of Higher Education, 5NY2d430; that the appellant did not pursue his administrative remedy and that Judge Kassal's Memorandum Decision gave the appellant the right to insist on hearings.

"Claim Number:69881" was dismissed effective February 14, 1985; the Court of Claims concluded that the appellant's motion to vacate his prior Order was in fact a motion to reargue.

"Motion Number:M-32879" was dismissed effective May 16, 1985; the Court of Claims concluded that the appellant failed to pursue proper procedure and reiterated the doctrine of Austin v. Board of Higher Education, 5NY2d430.

"Motion Number:M-33267" was dismissed effective August 22, 1985; the Court of Claims concluded the only method

the appellant might use to obtain relief was by appeal and that further attempts to reopen the appellant's claim by vacatur on notice would result in the Court holding the appellant in contempt. The Court was advised by the appellant in open session of his position on the law; that, the appellant's right to file a claim for salary occurred each two weeks the appellant was not on the payroll of the State of New York. The appellant further advised the Court in open session that its ruling if imposed would illegally restrain the appellant from exercising basic constitutional Rights protected by the Federal and State Constitutions (e.g., speech, liberty and property Rights).

"Motion Number:M-33750" asserted a claim of two hundred fifteen thousand eight hundred thirteen dollars and eighty-five cents for salary due, in error, the amount should have been two hundred fifteen thousand two hundred thirteen dollars and eighty-five cents ($215,213.85). The claim was based upon computations of the salary of grade 22. The Court of Claims dismissed the claim effective December 31, 1985. It was concluded that the appellant had been guilty of Criminal Contempt and fined the appellant the sum of two hundred and fifty dollars ($250.00), with the implied proviso that he not file future claims, in a Summary Proceeding. The Court granted the appellant ninety (90) days after service upon him of a copy of the Order of Contempt to file a timely notice of appeal and appeal to purge himself of the alleged contempt.

The appellant raised the constitutional questions, in the open session of the Court of Claims August 13, 1985, of the possible abridgement to his Speech, Liberty and Property Rights, if the Court mandated sanctions against him for filing a valid claim for salary. These constitutional claims were documented in the "Affidavit In Support Of Motion to Reopen Claim" heard on November 27, 1985 and they were reasserted in the open session of the Court of Claims at that time.

QUESTIONS RAISED IN THE SUPREME COURT

Petition:

"Item 21": That the acts of the Appellees have effectuated

an unlawful abridgement of the appellant's constitutional privileges (to wit, Rights) without due process or equal protection of the laws.

"Item 42": That exception is taken to the transcript which is reputed to be a duplication of the oral argument and discourse of November 27, 1985, as being materially deficient. Much of what transpired at the hearing has been left unrecorded.

The "Ad Damnum Clause", items 1 through 8, requested relief from the documented abuses.

Brief: Questions Raised Pursuant to Section 7803

1. Whether the body or officer failed to perform a duty enjoined upon it by law?

2. Whether the body or officer proceeded, is proceeding or is about to proceed without or in excess of jurisdiction?

3. Whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion as to the measure or mode of penalty or disciple imposed?

4. Whether a determination made as a result of a hearing held, and at which evidence was taken, pursuant to direction by law is, on the entire record, supported by substantial evidence?

Federal Constitution:

1. Whether the Order holding the appellant in Criminal Contempt and fining him two hundred and fifty dollars ($250.00) effectuated an abridgement of the appellant's constitutional Rights within the framework of the Fourteenth Amendment, Section 1? Answer of Court Below: The Court of Claims determined that it was a lawful exercise of discretion to summarily mandate the Order of Criminal Contempt and fine of two hundred and fifty dollars ($250.00).

2. Whether the Order holding the appellant in Criminal Contempt effectuated an abridgement of the appellant's constitutional Rights within the framework of the First Amendment as being oppressive of his Freedom of Speech? Answer of Court Below: The Court of Claims determined that its Order of Criminal Contempt, with implied proviso forbidding the appellant to file claims for salary, was legally mandated.

State Constitution:

1. Whether the Order of Criminal Contempt and the fine of two hundred and fifty dollars ($250.00) effectuated an abridgement of the appellant's constitutional Rights within the framework of Article I, Sections 6, 8 and 11? Answer of Court Below: The Court of Claims determined that its Order of Criminal Contempt, with implied proviso forbidding the appellant to file claims for salary, was legally mandated.

State Statutory Law As Embraced Within Section 3003:

1. Whether the provision of this section which bars the preclusion of future proceedings to recover payments under pension or retirement contracts extend to employment contracts? Answer of Court Below: The Court of Claims by mandating the Order of Criminal Contempt, with the implied proviso forbidding the appellant to file claims for salary, appears to have counteracted the force and effect of this principle of law.

Petitioner's Reply Affidavit and Motion:

"Defense allegation number 3": Whether the petition and motion document, presenting the same arguments and seeking the same relief already denied on numerous occasions in a variety of forums, is precluded by the Doctrine of Res Adjudicata? Answer of Court Below: The Court of Claims determined the appellant to be foreclosed from remedy because he failed to comply with proper procedure and due to the principle of law laid down in the case of Austin v. Board of Higher Education, 5NY2d430(1959).

Exceptions:

The appellant took exceptions to the use of that portion of the Appellees' Exhibit "D" which relates to transcript of the hearing on November 27, 1985 as being:

1. Materially defective due to missing portions of the testimony which took place in Court.

2. Unnecessary to substantiate a Summary Proceeding as the only consideration is what transpired in the presence of Judge Edward M. Murray.

Objections:

1. This was a Summary Criminal Conviction of Contempt, therefore appeal is not appropriate, as appeal is appropriate in contempt proceedings brought on by show cause procedures.

2. The Doctrine of Res Adjudicata can never apply if there is a complaining party, unless the matter is decided on the merits.

QUESTIONS RAISED IN THE APPELLATE DIVISION

Brief: Federal Constitution:

1. Whether as a matter of Federal Constitutional Law, the acts of the Appellees, holding the appellant in Criminal Contempt and the fine of two hundred and fifty dollars ($250.00), exceeded their Jurisdiction, thus, allowing an abridgement of the appellant's Rights within the framework of Section 1 of the Fourteenth Amendment? Answer of Court Below: The Supreme Court, Special Term, in dismissing the Petition, did not address this issue, except to indicate the Matter was not the proper Jurisdiction of an Article 78 Proceeding.

2. Whether as a matter of Federal Constitutional Law, the acts of the Appellees, denying the appellant the right to file a claim for salary due, exceeded their Jurisdiction, thus, allowing an abridgement of the appellant's Rights within the framework of Section 1 of the Fourteenth Amendment? Answer of Court Below: The Supreme Court, Special Term, in dismissing the Petition, determined that the requested relief was barred by the Doctrine of Res Adjudicata.

3. Whether as a matter of Federal Constitutional Law, the acts of the Appellees, denying the appellant the right to file for a future claim for salary due, exceeded their Jurisdiction, thus, allowing an abridgement of the appellant's Rights within the framework of the First Amendment as being oppressive of the Freedom of Speech Provision? Answer of Court Below: The Supreme Court, Special Term, in dismissing the Petition, did not address this issue, except to indicate the Matter was not the proper Jurisdiction of an Article 78 Proceeding.

State Constitutional Law:

4. Whether as a matter of State Constitutional Law, the

acts of the Appellees, holding the appellant in Criminal Contempt and the fine of two hundred and fifty dollars ($250.00) for prosecuting a valid claim for salary due with the implied proviso that no future claim be filed, exceeded their Jurisdiction, thus, allowing an abridgement of the appellant's Rights within the framework of Article I (Sections 6, 8 and 11)? Answer of Court Below: The Supreme Court, Special Term, in dismissing the Petition, determined that the requested relief was barred by the Doctrine of Res Adjudicata and the Matter was not the proper Jurisdiction of an Article 78 Proceeding.

State Statutory Law:

5. Whether as a matter of State Statutory Law, the acts of the Appellees, denying the appellant the benefit of the principle of law applicable in Section 3003 of the Civil Practice Law and Rules, exceeded their Jurisdiction, thus, allowing an abridgement of the appellant's Rights as protected thereby? Answer of Court Below: The Supreme Court, Special Term, in dismissing the Petition, determined that the requested relief was not the proper Jurisdiction of an Article 78 Proceeding.

Exceptions:

a. The appellant took exceptions to the Appellees' Exhibit "D" which relates to the transcript of the hearing held on November 27, 1985, as being:

1. Materially defective due to missing portions of the testimony which took place at the hearing in Court.

2. Unnecessary to substantiate a Summary Proceeding as the only consideration is that which transpired in the presence of Judge Edward M. Murray.

b. The appellant took an exception to the Appellees' (Judge Edward M. Murray) Jurisdiction to dictate the mode to be used to process a pending claim, when that election rests with the person proceeding with the cause.

c. The appellant took exceptions to the Appellees' (Judge Edward M. Murray) Jurisdiction to find him in Criminal Contempt of Court and to fine him two hundred and fifty dollars ($250.00), under the circumstances of this case.

d. The appellant took exceptions to the Jurisdiction of Justice George L. Cobb to dismiss the Petition based upon the Doctrine of

Res Adjudicata and the fact that the Summary Criminal Contempt Proceeding in question was not the proper Jurisdiction of an Article 78 Proceeding.

The "Ad Damnum Clause", items 1 through 9, requested relief from the documented abuses.

Appellant's Reply Brief: Motion

1. Whether the Doctrine of Res Adjudicata bars appellant from relitigating his claim for reinstatement to employment by the State with back pay? Answer of Court Below: The Supreme Court, Special Term, in dismissing the Petition, determined that the claim was barred by the Doctrine of Res Adjudicata.

2. Assuming, arguendo, that the Doctrine of Res Adjudicata is inapplicable, whether a Writ of Mandamus lies to compel the Appellees to reinstate the appellant to the payroll of the State? Answer of Court Below: The Supreme Court, Special Term, in dismissing the Petition, determined that this Matter was not the proper Jurisdiction of an Article 78 Proceeding.

3. Whether an Article 78 Proceeding is the proper Venue Jurisdiction to challenge the Orders of the Court of Claims, including the Order adjudging the appellant in Criminal Contempt? Answer of Court Below: The Supreme Court, Special Term, in dismissing the Petition, determined that this Matter was not the proper Jurisdiction of an Article 78 Proceeding and that it was barred by the Doctrine of Res Adjudicata.

4. Whether a Writ of Prohibition lies to vacate the Contempt Order on the ground that Appellees (i.e., Judge Edward M. Murray) exceeded their Jurisdiction in holding the appellant in Criminal Contempt in contravention of the Federal and State Constitutions? Answer of Court Below: The Supreme Court, Special Term, in dismissing the Petition, determined that this Matter was not the proper Jurisdiction of an Article 78 Proceeding.

General Comment:

Where ever the Appellees refer to any common law writs of "mandamus" or "prohibition", it should be noted, these references were not made by the appellant and they are not properly in issue; therefore, this allusion is frivolous and without merit.

QUESTIONS RAISED IN THE COURT OF APPEALS

Brief:

1. Whether, as a matter of Federal Constitutional Law, the Appellate Division has construed the Judiciary Law; Civil Practice Law and Rules in such a manner as to allow the Court's mandated Order of Criminal Contempt and the summary fine to continue to abridge the appellant's Rights as protected by the Fourteenth Amendment, Section 1 (Due Process, Equal Protection Clauses)? Answer of Court Below: The Appellate Division, in affirming the Ordered Judgment of Special Term, determined that the appellant chose the incorrect Venue Jurisdiction to obtain relief.

2. Whether, as a matter of Federal Constitutional Law, the Appellate Division has construed the laws which govern the rights of the appellant, to file claims for salary due, in sueh a manner as to allow for an abridgement of the appellant's Rights as protected by the Fourteenth Amendment, Section 1 (Due Process, Equal Protection Clauses)? Answer of Court Below: The Appellate Division, in affirming the Ordered Judgment of Special Term, determined that the appellant's claim for reinstatement to the employment of the State with back wages had been foreclosed upon the grounds of Res Adjudicata, expiration of the Statute of Limitations, the failure to pursue proper administrative remedies and the subsequent decision to seek relief by means of an Article 78 Proceeding.

3. Whether, as a matter of Federal Constitutional Law, the Appellate Division has construed the laws which govern the rights of the appellant, to file a future claim for salary due, in such a manner as to allow for an abridgment of the appellant's Right as protected by the First Amendment (Freedom of Speech Provision) and embraced within the Fourteenth Amendment? Answer of the Court Below: The Appellate Division, in affirming the Ordered Judgment of Special Term, determined that the appellant's claim for wages had been foreclosed upon the grounds of Res Adjudicata, expiration of the Statute of Limitations, the failure to pursue proper administrative remedies and the subsequent decision to seek relief by means of an Article 78 Proceeding.

4. Whether, as a matter of State Constitutional Law, the Appellate Division has construed the Judiciary Law; Civil Practice Law and Rules in such a manner as to allow the Court's mandated

Order of Criminal Contempt and the summary fine to continue to abridge the appellant's Rights as protected by Article 1 (Sections 6, 8 and 11)? Answer of Court Below: The Appellate Division, in affirming the Ordered Judgment of Special Term, determined that the appellant chose the incorrect Venue Jurisdiction to obtain relief.

5. Whether, as a matter of State Constitutional Law, the Appellate Division has construed the laws which govern the rights of the appellant, to file claims for salary due, in such a manner as to allow for an abridgement of the appellant's Rights as protected by Article 1 (Sections 6 and 11)? Answer of Court Below: The Appellate Division, in affirming the Ordered Judgment of Special Term, determined that the appellant's claim for reinstatement to the employment of the State with back wages had been foreclosed upon the grounds of Res Adjudicata, expiration of the Statute of Limitations, the failure to pursue proper administrative remedies and the subsequent decision to seek relief by means of an Article 78 Proceeding.

6. Whether, as a matter of State constitutional Law, the Appellate Division has construed the laws which govern the rights of the appellant, to file a future claim for salary due, in such a manner as to allow for an abridgement of the appellant's Rights as protected by Article 1 (Sections 6, 8 and 11)? Answer of Court Below: The Appellate Division, in affirming the Ordered Judgment of Special Term, determined that the appellant's claim for wages had been foreclosed upon the grounds of Res Adjudicata, expiration of the Statute of Limitations, the failure to pursue proper administrative remedies and the subsequent decision to seek relief by means of an Article 78 Proceeding.

7. Whether, as a matter of State Statutory Law, the Appellate Division has construed the Court of Claims Act; Judiciary Law; Civil Service Law; State Finance Law; Civil Practice Law and Rules in such a manner as to allow a continued abridgement of the appellant's Rights protected thereunder? Answer of Court Below: The Appellate Division, in affirming the Ordered Judgment of Special Term, determined that the appellant chose the incorrect Venue Jurisdiction to obtain relief from the Order of Criminal Contempt and summary fine; that, the appellant's claim for reinstatement to the employment of the State with back wages and all future claims for wages had been

foreclosed upon the grounds of Res Adjudicata, expiration of the Statute of Limitations, the failure to pursue proper administrative remedies and the subsequent decision to seek relief by means of an Article 78 Proceeding.

EXCEPTIONS:

a. The appellant takes exceptions to the "Decision in Memorandum" dated May 7, 1987, as follows:

1. The chronology of the case is that the appellant sought to be restored to the payroll of the State of New York on or about December, 1978 after his weight had stabilized to about its normal weight of one hundred and thirty-five (135) pounds from the one hundred and nineteen (119) pounds to which it had dropped as of July, 1978, at which time, the appellant absented himself from work on sick leave.

2. The appellant did not bring the suit to be restored to his former position per se but to seek comparable employment to the highest grade from which he had been unlawfully restrained.

3. The Provision of Section 81.7 of the Civil Service Law is not applicable, in this instance, to the appellant: he has never had a prior hearing in order to actuate the predicate for the Provision of Section 81.7 nor has he agreed to waive his right to a hearing; therefore, no jurisdiction can be obtained in such a hearing pursuant to that Provision.

4. The proper Venue Jurisdiction in situations of Criminal Contempt summarily punished is by an Article 78 Proceeding and it does not matter whether there is a record.

The "Ad Damnum Clause", items 1 through 11, requested relief from the documented abuses.

STATEMENT FOR PLENARY CONSIDERATION

The employment conduct of the appellant has been such that the Appellees are precluded from bringing any serious charges of misconduct or dereliction of duty against him. Having performed his job responsibilities in better than a substantial manner of compliance, the appellant appeals this matter to the Supreme Court for resolution in that the Courts of the State of New York have construed laws, issued decisions, written opinions,

mandated orders, made judgments in such a manner as to deny the appellant the Guaranties of the Freedom of Speech Provision of the First Amendment and the Due Process, Equal Protection of the Laws Provision of the Fourteenth Amendment.

The Officers and Agencies of the State of New York have committed acts and applied laws against the appellant in such a manner as to allow said commissions and applications to stand in contravention of the appellant's Federal and State Constitutional Guaranties.

It is the contention of the appellant that the laws of the State of New York cannot effectuate a preclusion of rights guaranteed to the appellant by the Federal Constitution, in instances of this type. The Courts of the State of New York have interpreted the laws (e.g., Constitutional, Statutory and Case) which provide for the resolution of the matter, in such a manner as to deny the appellant the very rights the Federal Constitution guarantees. There is no law of substance (i.e., Constitutional, Statutory and Case) known to the appellant which legally supports the final decision reached by the Courts of the State of New York, in instances of this type.

CONCLUSION

It is noted that there are no precedents in Equity Proceedings, however, the appellant requests this Court to take Judicial Notice of applicable Case; Statutory; State Constitutional Law; Federal Constitutional Law and the fact that any appellate court should exercise its judicial powers to correct gross miscarriages of justice. Whereas, the appellant was unlawfully relieved of his employment; the appellant has not had nor does he now have employment; the appellant has not committed any acts of job related misconduct; the appellant has not been guilty of any substantial acts of incompetence; the following relief is requested:

1. Compel Appellees to perform their job responsibilities.

2. Compel Appellees to restore the appellant to the employment/payroll of the State of New York to the highest grade from which he was unlawfully dismissed.

3. Compel Appellees to pay appellant the salary he would have earned had he not been illegally restrained from employment and damages he might have sustained as a result of these

enumerated illegal acts.

4. Compel Appellees to grade the examination taken December 8, 1979, by the appellant, in a manner consonant with the Equal Protection Clauses of the Federal and State Constitutions.

5. Compel Appellees to provide the appellant with disclosure of the proper parties.

6. Compel the vacatur of the Order, which Ordered and Adjudged the appellant guilty of Criminal Contempt and summary punishment of the two hundred and fifty dollar ($250.00) fine, and each prior Ordered Judgement of the Court of Claims in this matter.

7. Compel the vacatur of the Ordered Judgment of the Supreme Court, Special Term, Part I, dated June 7, 1986 and entered in the County Clerk's Office Albany County, June 16, 1986.

8. Compel the vacatur of the Order of the Appellate Division, Third Judicial Department, dated and entered May 11, 1987.

9. Compel the vacatur of the Order of the Court of Appeals, State of New York, dated and entered September 3, 1987.

10. Provide plenary consideration of the Matter.

11. For any further relief this Court deems proper.

Respectfully,

Ernest A. Hunter
appellant-counsel pro se
2816 8th Avenue
New York, New York 10039

APPENDIX

(i)A. Motion Number:M-33750: Ernest A. Hunter, claimant, against The State of New York, Defendant, Court of Claims, Albany County, December 31, 1985: "The following papers numbered 1 through 7 were read on motion by claimant for an order vacating the order filed in the office of the Clerk of the Court of Claims on August 22, 1985:

1. Notice of Motion to Reopen Claim.
2. Affidavit in Opposition.
3. Claimant's Reply Affidavit and Notice to Dismiss Defendant's Defense.
4. Order filed January 27, 1983 dismissing claim #67074 from which there was no appeal.
5. Order filed February 14, 1985 denying claimant's motion to vacate the order filed January 27, 1983 from which there was no appeal.
6. Order filed May 16, 1985 denying claimant's motion to vacate the order filed February 14, 1985.
7. Order filed August 22, 1985 denying claimant's motion to reopen the claim, and vacate the order filed May 16, 1985.

Upon the foregoing papers, this motion is disposed of as follows: This is a claim for lost wages in the amount of $205,975.63. The Court has set forth all the relevant facts in the orders described above as papers 4 through 7. On the oral argument in open court the Court informed the claimant that the Court would fine claimant $250.00 for continually moving to vacate prior orders without appealing those prior orders to a higher court.

Since the order filed August 22, 1985 the Court has researched the Judiciary Law on matters of contempt. Section 751 of the Judiciary Law permits the Court to fine the claimant only $250.00 for a criminal contempt. The word "criminal" does not imply that claimant is guilty of a crime. It is used only for the purpose of defining the type of contempt of which the claimant is guilty. The claimant is wasting his own time, and unnecessarily harassing the Attorney General and the Court by bringing consecutive motions for the same relief. The difference between a civil contempt and a criminal contempt was set forth by the Court

of Appeals in McCormick v. Axelrod, 59NY2d574. At page 583 the Court stated: "Criminal contempt, on the other hand, involves vindication of an offense against public justice and is utilized to protect the dignity of the judicial system and to compel respect for its mandates.....Inasmuch as the objective is deterrence of disobedience of judicial mandates, the penalty imposed is punitive in nature.....Although the line between the two types of contempt may be difficult to draw in a given case, and the same act may be punishable as both a civil and a criminal contempt, the element which serves to elevate a contempt from civil to criminal is the level of willfullness with which the conduct is carried out." (Mtr of McCormick v. Axelrod, 59NY2d574,583)

The Court discussed the matter with claimant in open court on November 27, 1985. The Court has attached hereto a transcript of the oral argument on November 27, 1985. This Court has been sympathetic to claimant because the claimant obviously feels he has been wronged and has not had his day in court. An examination of the record indicates that he may have been deprived of his day in court through his own failure to follow orderly procedure. The record also indicates that any further attempt of claimant to obtain relief in this court would be an exercise in futility.

The trial courts are burdened with clogged calendars and should not be harassed by successive motions for the same relief. On October 11, 1985 Judge William C. Connor of the United States District Court, in a 25 page opinion dealing with repeated attempts to obtain the same relief, dismissed the suit, granted the defendants counsel fees and costs and enjoined them from further court action except for an appeal from Judge Connor's decision. Counsel fees and costs amounted to $52,393.92. (See New York Law Journal, October 21, 1985, p. 1 - "Pair Are Again Assessed Costs for Refusal to End Litigation").

Similar action was taken by Mr. Justice Greinfield of the New York Supreme Court in an article reported in the New York Law Journal March 12, 1985 entitled: "Attorney Assessed Court Cost for Bringing 'Retaliatory' Suit."

The Court directs the Attorney General to enforce the contempt judgment to be entered herein unless the claimant appeals this order to the Third Department of the Appellate Division forthwith. The appeal should be perfected by the

claimant within 90 days of the service upon claimant of a copy of this order and the judgment to be entered thereon. In coming to this conclusion as to a criminal contempt the Court has studied the Judiciary Law and the following cases: Singer v Groh, 99AD2d758 (2nd Dept); Rodriguez v Feinberg, 40NY2d994; Matter of Drimmer, 97AD2d792; Matter of McCormick v Axelrod, supra; State of New York v Unique Ideas, 44NY2d345, 349 and N.A. Dev. Co. v Jones, 99AD2d 238,240,241.

In view of the foregoing, it is hereby
ORDERED that the motion to vacate the prior order is denied, and it is further
ORDERED that claimant's motion to strike the defendant's defense is denied, and it is further
ORDERED AND ADJUDGED that said Ernest A. Hunter is guilty of a criminal contempt of court committed by filing and serving this notice of motion without appealing from the order filed August 22, 1985 in direct defiance of the Court's directive to claimant in open court on August 13, 1985 and in the body of the order duly filed in this court August 22, 1985 and said action in serving and filing this notice of motion has directly and seriously impaired orderly procedure and resulted in disrespect of the lawful authority of this court and it is further
ORDERED AND ADJUDGED that Ernest A. Hunter, claimant, pay a fine of $250.00 to the Clerk of the Court of Claims, and it is further
ORDERED AND ADJUDGED that Ernest A. Hunter, claimant, may purge himself of this contempt by filing a timely notice of appeal from the order denying claimant's motions and perfecting said appeal within 90 days of the service upon him of a copy of this order and is further
ORDERED AND ADJUDGED that, in the event that the appellate courts affirm the order of this court, and in the further event that claimant, in any manner, seeks to assert his claim for wages, the fine hereinabove levied shall be reinstated."

B.Index Number:510-86: In the Matter of the Application of Ernest A. Hunter, petitioner, v. Judge Edward M. Murray, A Judge of the Court of Claims, Justice Building in the City and County of Albany, New York; New York State Department of

Civil Service, et al.; The State of New York, Respondents, Supreme Court, Special Term, Part I, Third Judicial Department, Albany County, June 16, 1986: "The petitioner has commenced an article 78 proceeding which seeks review of an order holding him in criminal contempt of court and which also seeks various relief which has been demanded and denied in numerous previous applications.

The petitioner's request for relief which has previously been denied is either barred by res judicata or not properly the subject of the instant article 78 proceeding (CPLR 7801 [subd.(2)]).

It also appears that review of the order holding the petitioner in contempt of court is not properly the subject of an article 78 proceeding. CPLR 7801 (subd.[2]) provides that there may be no article 78 review of a determination "which was made in a civil action or criminal matter unless it is an order summarily punishing a contempt committed in the presence of the court." Such provision is intended to allow for the creation of a record or return where the contempt is committed in the presence of the court. Appeal is the proper means of review where the issues involving the contempt have all been placed on the record (Matter of Silver v. Hannah, 37AD2d949). Since there exists a suitable record for appellate review and since the order holding the petitioner in contempt of court specifically provided that petitioner could purge himself of the contempt by appealing the order, it is determined that the instant article 78 proceeding is an improper procedural means of seeking review and shall be dismissed.

Submit judgment on notice. Dated: May 30, 1986.

All papers to attorney for respondents.

C.Index Number:510-86: In the Matter of the Application of Ernest A. Hunter, petitioner, v. Judge Edward M. Murray, a Judge of the Court of Claims, Justice Building in the City and County of Albany, New York; New York State Department of Civil Service, et al.; The State of New York, Respondents, Supreme Court, Special Term, Part I, Third Judicial Department, Albany County, June 16, 1986: "The Petitioner having commenced an Article 78 proceeding which seeks review of an Order holding him in criminal contempt of court and which also seeks various relief which has been demanded and denied in numerous previous

applications,

And the Court having heard the proofs and allegations of the parties and having duly made its decision dismissing this Petition on the grounds that the relief requested is either barred by res judicata or not properly the subject of an Article 78 proceeding, it is

ORDERED and ADJUDGED that the Petition of Ernest A. Hunter, Petitioner against Judge Edward M. Murray, New York State Department of Civil Service, et al., and the State of New York be and is hereby dismissed."

D.Index Number:510-86: File Number:53779: In the Matter of the Application of Ernest A. Hunter, petitioner- appellant, v. Judge Edward M. Murray, A Judge of the Court of Claims, Justice Building in the City and County of Albany, New York; New York State Department of Civil Service, et al.; The State of New York, Respondents, Appellate Division, Third Judicial Department, Albany, New York, May 11, 1987: "Appeal from a judgment of the Supreme Court (Cobb, J.), entered June 13, 1986 in Albany County, which dismissed petitioner's application, in a proceeding pursuant to CPLR article 78, to, inter alia, review an order holding him in criminal contempt of court.

Petitioner was employed by the State Office of Alcoholism and Substance Abuse as a narcotic parole officer and substance abuse treatment specialist . As a result of deemphasis on drug programming, petitioner's position was abolished in March 1979, and he was placed on a "preferred eligible list" for alternative employment. Thereafter, petitioner sought reinstatement to his previous job, which required him to take physical and psychiatric examinations prior to any reinstatement. He failed the psychiatric examination and his name was removed from the eligible list for employment. A request by him to the Department of Civil Service for more information about his medical and psychiatric examinations was denied as a matter of policy by letter dated April 29, 1980. The letter further advised petitioner that the desired information would be released to his personal physician upon request, and that if petitioner desired a hearing in regard to the Department's determination he should submit such a request in writing within 30 days.

Petitioner did not seek a hearing; rather, he commenced a

CPLR article 78 proceeding in May 1980 against the Department for unlawful denial of employment. The proceeding was dismissed as premature by decision dated July 18, 1980, and the matter returned to the Department with a directive that a hearing be scheduled pursuant to Civil Service Law § 81(7) within 90 days. During the ensuing 90-day period, petitioner was informed in writing by the Department of his entitlement to a hearing and that a failure to request a hearing would be deemed a waiver of his right and result in his name being permanently removed from the preferred list for narcotic parole officers. Petitioner did not request a hearing, but attempted to appeal the July 18, 1980 decision. Leave to appeal was denied by the Appellate Division, First Department, an appeal to the Court of Appeals was dismissed and the Supreme Court of the United States denied certiorari.

In April 1981, petitioner commenced another article 78 proceeding which was dismissed on the grounds of the expiration of the Statute of Limitations and res judicata. The Appellate Division, First Department affirmed and appeals to the Court of Appeals and the Supreme Court of the United States were dismissed.

Thereafter, petitioner filed a claim against the State in the Court of Claims for wages he would have received if he had been retained in the State's employ. The claim was dismissed by order dated January 26, 1983 on the ground that petitioner failed to first establish that he was entitled to his former employment (see, Austin v Board of Higher Educ. of City of N.Y., 5NY2d430). Petitioner did not appeal the dismissal of his claim. However, he thereafter made successive unsuccessful motions to vacate the order of January 26, 1983 in February, May and August 1985. Following the denial of the August 1985 motion, petitioner was informed by respondent Edward M. Murray, Judge of the Court of Claims, that his proper remedy to review the court's decision was an appeal, not a motion to vacate. In addition, the court warned petitioner that another motion to vacate seeking the same relief would result in a finding and fine for criminal contempt of court. Nevertheless, in November 1985, petitioner made his fourth motion to vacate the court's decision, and a contempt order was issued with imposition of a $250 fine, with the right to petitioner to purge himself of contempt by appealing, within 90 days, the order denying petitioner's motions. Instead of proceeding with a

timely appeal, petitioner chose to commence the instant article 78 proceeding seeking review of the contempt order, as well as reinstatement to employment. Supreme Court dismissed the proceeding and this appeal ensued.

The judgment dismissing the proceeding must be affirmed. When petitioner made his fourth motion to vacate the decision of the Court of Claims after being warned of the consequences, his actions were clearly in defiance of the instructions and authority of the court and constituted the willful disobedience of a lawful mandate of the court. Accordingly, the court possessed the jurisdiction, power and discretion to hold petitioner in criminal contempt (Judiciary Law § 751), and since petitioner had available to him full judicial review of the record of proceedings finding him in contempt through normal avenues of appellate review, relief under CPLR article 78 is not available (see, Matter of Morgenthau v Roberts, 65 NY2d749; Matter of Legal Aid Society of Sullivan County v Sheinman, 53NY2d12). Petitioner's argument of the applicability of the provisions of CPLR 7801(2) is without merit, since the order of contempt herein was not "summarily" granted, but made after due warning upon a record adequate for appellate review and with an opportunity to purge himself of the contempt (see, Matter of Silver v Hannah, 37AD2d949).

Petitioner, proceeding pro se, has been given every opportunity to pursue his lawful remedies. He has chosen to reject each and every suggestion and chart his own course in spite of the many considerations and leniency afforded him by the courts throughout the history of this matter. The failure to pursue his administrative remedies and the subsequent decision to seek relief by means of article 78 proceedings foreclose any claim for job reinstatement and back wages upon the grounds of res judicata and the expiration of the Statute of Limitations (see, Smith v Russell Sage Coll., 54NY2d185, 194; see also, Watergate II Apts. v Buffalo Sewer Auth, 46NY2d52, 57; Matter of Reilly v Reid, 45NY2d24, 28; Austin v Board of Higher Educ. of City of N.Y., supra).

Judgment affirmed without costs."

E.Index Number:510-86: File Number:53779: In the Matter of the Application of Ernest A. Hunter, petitioner-appellant, v Judge

Edward M. Murray, A Judge of the Court of Claims, Justice Building in the City and County of Albany, New York; New York State Department of Civil Service, et al.; The State of New York, Respondents, Appellate Division, Third Judicial Department, Albany, New York, May 11, 1987: "The petitioner-appellant, having appealed from a judgment of the Supreme Court at Special Term (COBB, J.) entered in the Albany County Clerk's Office on June 13, 1986, which dismissed his application/petition in a proceeding pursuant to CPLR Article 78, to, inter alia, review an order holding him in criminal contempt of court, and said appeal having been presented during the above- stated Term of this Court, and having been argued by Ernest A. Hunter,
appellant pro se, and by Joseph Koczaja, Assistant Attorney General, of counsel for respondents, and, after due deliberation, the Court having rendered a decision on the 7th day of May 1987, it is hereby
Ordered that the judgment so appealed from be and the same hereby is affirmed without costs."

(ii)F.Index Number:7434-81: In the Matter of the Application of Ernest A. Hunter, petitioner, v New York State Department of Civil Service, et al., Respondents, Supreme Court, Special Term, Part I, First Judicial Department, New York, New York, June 2, 1981: "In this unopposed application by pro se petitioner seeking relief against the New York State Department of Civil Service, respondent State Department of Civil Service has not been served with process. Service is therefor not complete. In Patchogue Scrap Iron & Metal Co. v. Ingraham, 57M2d290, 292NYS2d285, it was held that service on the Attorney General but not on the respondent Health Commissioner was insufficient to give the Court jurisdiction over the Health Commissioner.

The same principle is applicable. Accordingly, the application is denied and the petition is dismissed."

G.Index Number:12370-81: In the Matter of the Application of Ernest A. Hunter, petitioner, v New York State Department of Civil Service, et al.; Respondents, Supreme Court, Special Term, Part I, First Judicial Department, New York, New York, September 23, 1981: "Upon the foregoing papers this Motions Nos. 129 and 213 of June 30, 1981 are consolidated for

disposition.

This is an application by petitioner, pro se, pursuant to Article 78 for an order of mandamus, compelling respondent to reinstate petitioner to his former position to wit: Senior Narcotic Parole Officer. Respondent cross-moves pursuant to 3211(a)(5) to dismiss the proceeding.

Petitioner previously commenced a proceeding in 1980 in which he sought to be reinstated to his previous position as a Narcotic Parole Officer. The Court, per Kassal, J. granted the petition to the extent of directing respondent N.Y. State Dept. of Civil Service to schedule a hearing pursuant to § 81.7 of the Civil Service Law. Petitioner did not seek to schedule a hearing, but appealed to the Appellate Division, the Court of Appeals and the U.S. Supreme Court which denied him leave to appeal.

This proceeding is clearly time barred by the statute of limitations pursuant to CPLR § 217, and the doctrine of res judicata. Petitioner is seeking the same relief sought in the proceeding commenced in 1980, and granted by Kassal, J.

Accordingly, the application is denied and the petition is dismissed. Settle judgment."

H.Index Number 12370/81: In the Matter of the Application of Ernest A. Hunter, petitioner, v New York State Department of Civil Service, et al.; Respondents, Supreme Court, Special Term, Part I, First Judicial Department, New York, New York, September 23, 1981: "Petitioner having moved this Court for a judgment restoring petitioner to State employment, with back pay, and punitive damages, and respondent New York State Department of Civil Services having cross-moved pursuant to CPLR § 3211(a)(5) to dismiss the proceeding and both applications having come on to be heard at a Special Term, Part I on the 30th day of June 1981.

NOW, on reading and filing the notice of petition and petition, and the exhibits annexed thereto, the notice of motion of respondent dated the 18th day of June, 1981, the affidavit thereto annexed of BARBARA B. BUTLER, ESQ., sworn to the 18th day of June, 1981, and the exhibits annexed thereto, the reply of petitioner Ernest A. Hunter dated the 23rd day of June, 1981 and the court having rendered a written decision, dated August 13, 1981.

NOW, on motion of ROBERT ABRAMS, Attorney General of the State of New York, attorney for respondent, it is hereby

ORDERED, ADJUDGED AND DECREED that the application for a judgment restoring him to state employment with back pay, and punitive damages is denied and the petition dismissed. ENTER."

I.Index Number:12370-81: In the Matter of the Application of Ernest A. Hunter, petitioner-appellant, v New York State Department of Civil Service, et al.; Respondents, Appellate Division, First Judicial Department, New York, New York, December 17, 1981: "An appeal having been taken to this Court by the petitioner-appellant from an order and judgment (one paper) of the Supreme Court, New York County (Price, J.), entered on September 23, 1981 which denied petitioner's application for a judgment restoring him to state employment with back pay and punitive damages and granted respondent's motion to dismiss the petition, and said appeal having been argued by Mr. Ernest A. Hunter, appellant pro se, and by Barbara B. Butler of counsel for the respondent; due deliberation having been had thereon,

It is unanimously ordered that the order and judgment so appealed from be and the same is hereby affirmed, without costs and without disbursements. ENTER:"

J.Index Number:12370-81: In the Matter of the Application of Ernest A. Hunter, petitioner-appellant, v New York State Department of Civil Service, et al.; Respondents, Court of Appeals, Albany, New York, February 16, 1982: "The appellant having filed notice of appeal in the above title and due consideration having been thereupon had, it is

ORDERED, that the appeal be and the same hereby is dismissed without costs, by the Court sua sponte, upon the ground that no substantial constitutional question is directly involved."

K.Index Number:10216-80: Motion Number:1128: In the Matter of the Application of Ernest A. Hunter, petitioner-appellant, v New York State Department of Civil Service, et al.; Court of Appeals, Albany, New York, November 11, 1980: "A motion for leave to appeal to the Court of Appeals in the above cause having been

heretofore made upon the part of the appellant herein and papers having been submitted thereon and due deliberation thereupon had, it is

ORDERED, that the said motion be and the same hereby is dismissed upon the ground that the order sought to be appealed from does not finally determine the proceeding and it is not "an order of the appellate division" within the meaning of CPLR 5602 (subd.[a], par 2) (see Matter of Codd v McGuire, 46NY2d1036)."

L.Index Number:10216-80: Motion Number:M-3144: In the Matter of the Application of Ernest A. Hunter, petitioner - appellant, v New York State Department of Civil Service, et al.; Appellate Division, First Judicial Department, New York, New York, September 30, 1980: "The above-named petitioner having moved for leave to appeal from the order of the Supreme Court, New York County entered on or about July 18, 1980,

Now, upon reading and filing the notice of motion, with proof of due service thereof, and the papers filed in support of said motion, and the papers filed in opposition or in relation thereto; and due deliberation having been had thereon,

It is ordered that said motion be and the same hereby is denied."

M.Index Number:10216-80: In the Matter of the Application of Ernest A. Hunter, petitioner, v New York State Department of Civil Service, et al.; Supreme Court, Special Term, Part I, First Judicial Department, New York, New York, January 22, 1981: "The petition is granted to the following extent only:

The affidavit of respondent's attorney admits (and the attached Notice confirms) that the petitioner may have been erroneously advised to appeal the determination under Section 50.4 of the Civil Service Law rather than to request a hearing pursuant to Section 81.7 of the Civil Service Law. Although a subsequent letter to the petitioner did inform him of the correct remedy, he, nevertheless, elected to commence this proceeding in its stead.

The petitioner's March 19, 1980 letter should be treated as a timely election to pursue his right of review. That right of review, by way of a hearing under Section 81.7 of the Civil Service Law renders the determination challenged herein not a

final determination. Accordingly, pursuant to CPLR 7801(1), the petition must be dismissed as premature.

However, in the interests of justice and since the petitioner is appearing pro se and was previously misadvised by respondent, I am directing that the respondent settle a judgment dismissing the petition without prejudice and further directing that the respondent schedule a hearing within 90 days from this date, pursuant to Section 81.7 of the Civil Service Law on at least 15 days written notice to the petitioner.

Settle Judgment."

N.Notice of Determination: Employee Health Service: Civil Service Commission, March 12, 1980: "A. Your name will not appear on or will be removed from the eligible list for the examination listed above for the following reason(s): Other on the basis of psychiatric evaluation. ***C.Right of Appeal Pursuant to Section 50.4 of the Civil Service Law, you may appeal this determination by submitting a written statement of your objection to this action accompanied by available documentary evidence upon which you rely to show that this determination is incorrect. This material must be received by the New York State Civil Service Commission, Building 1, State Office Building Campus, Albany, New York 12239, no later than 30 days from the date indicated above."

(iii)O.Index Number:510-86: In the Matter of the Application of Ernest A. Hunter, petitioner-appellant v Judge Edward M. Murray, A Judge of the Court of Claims, Justice Building in the City and County of Albany, New York; New York State Department of Civil Service, et al.; The State of New York, Respondents, Court of Appeals, Albany, New York, September 3, 1987: "The appellant having filed notice of appeal in the above title and due consideration having been thereupon had, it is

ORDERED, that the appeal be and the same hereby is dismissed without costs, by the Court sua sponte, upon the ground that no substantial constitutional question is directly involved."

(iv)P.Notice of Appeal

In The Filed October 16, 1987

Supreme Court Of The United States

October Term, 1987

In the Matter of the Application of
Ernest A. Hunter, *Appellant*,

v. Your Index Number: 510-86

Judge Edward M. Murray, A Judge of the
Court of Claims, Justice Building in the
City and County of Albany, New York;

New York State Department of Civil
Service, *et al.*;

The State of New York, Appelles.

Appeal From The Court Of Appeals
Of The State Of New York

Notice Of Appeal

Dear Sirs:

Please Take Notice, an appeal is being taken from the Order, entered on the 3rd day of September, 1987, dismissing the appeal of the appellant to the Court of Appeals of the State of New York. The appeal had been taken to that Court due to the dismissal of the appellant's Article 78 Petition, filed in the Supreme Court, Special Term, Part I, Third Judicial Department; the Order Judgment of Judge Cobb was entered the 16th day of June, 1986. The Order Judgment of Judge Cobb was affirmed by the Appellate Division of the Supreme Court, Third Judicial Department; the Order was entered the 11th day of May, 1987. The appellant appeals from each and every part of the Order Judgment of the Supreme Court, Special Term, Part I; the subsequent affirming Orders of the Appellate Division, Third Judicial Department and the Court of Appeals of the State of New

York.

This appeal is to be heard during the October Term, 1987, or as soon thereafter as the Supreme Court of the United States should decide pursuant to 28 USC 1257(2) or if this Court should conclude that an appeal should not lie; then, alternative relief is requested pursuant to the provision of 28 USC 1257(3), as embraced by section 2103 of Chapter 133 of 28 USC.

Respectfully,

Ernest A. Hunter
appellant-counsel pro se
2816 8th Avenue
New York, New York 10039
Telephone: (212) 368-1732

Q.Affidavit of Service of the Notice of Appeal.

In The

Supreme Court Of The United States

October Term, 1987

In the Matter of the Application of
Ernest A. Hunter, *Appellant*,

v. Your Index Number: 510-86

Judge Edward M. Murray, A Judge of the
Court of Claims, Justice Building in the
City and County of Albany, New York;

New York State Department of Civil
Service, *et al.*;

The State of New York, Appelles.

Appeal From The Court Of Appeals
Of The State Of New York

Affidavit Of Service And File

The appelant avers that he served upon and filed with the persons and bodies below listed, by the United States Post Office first-class postage prepaid, one copy filed with the Courts as listed and three copies served upon Appelees, the Notice of Appeal and the Order of the Court of Appeals of the State of New York entered the 3rd day of September, 1987, on the 13th day of October, 1987, pursuant to 28 USC 28.5(c). Copies of the above-mentioned documents were forwarded to Judge Edward M. Murray, at the address: 30 Riding Club Road, Troy, New York 12180-7058.

Court of Appeals
Court of Appeals Hall
Eagle and Pine Streets
Albany, New York 12207

Supreme Court
Albany County Court House
Columbia and Eagle Streets
Albany, New York 12207

Court of Claims
State of New York
Justice Building
Albany, New York 12224

Judge Edward M. Murray
Court of Claims
State of New York
Justice Building
Albany, New York 12224

Mr. Walter Broadnax
President of New York State
Civil Service Commission
State Campus Building #1
Albany, New York 12239

Mr. Robert Abrams
Office of Attorney General
The Capitol
Albany, New York 12224

Respectfully,

Ernest A. Hunter
appellant-counsel pro se
2816 8th Avenue
New York, New York 10039
Telephone: (212) 368-1732

(v)R.Docket Number:80-1327:Ernest A. Hunter, petitioner, v New York State Department of Civil Service, et al.; Respondents, Supreme Court of the United States, March 23, 1981: "The court today entered the following order in the above entitled case:

The petition for a writ of certiorari is denied."

S.Docket Number:81-1785: Ernest A. Hunter, Appellant, v New York State Department of Civil Service, et al.; Appellees, Supreme Court of the United States, May 24, 1982: "The Court today entered the following order in the above entitled case:

The appeal is dismissed for want of a substantial federal question."

T.Letter from the Supreme Court of the United States:
Office of the Clerk: Addressee Joseph W. Bellacosa, Esquire, Clerk, Court of Appeals, June 23, 1982: "Enclosed is a certified
copy of the judgment of this Court in the above- entitled case.

Kindly acknowledge receipt of this judgment on the enclosed copy of this letter."

U.Affidavit of Service and File of the Jurisdictional Statement and Appended Material

The appellant avers that he served upon and filed with the persons and bodies below listed, by the United States Post Office, first-class postage prepaid, one copy filed with the Courts as listed and three copies served upon Appellees, the Jurisdictional Statement and Appended Material , on the 27th day of November, 1987, pursuant to 28 USC 28.5(c). Copies of the above-mentioned documents were forwarded to Judge Edward M. Murray, at the address: 30 Riding Club Road, Troy, New York 12180-7058.

Court of Appeals
Court of Appeals Hall
Eagle and Pine Streets
Albany, New York 12207

Supreme Court
Albany County Court House
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Court of Claims
State of New York
Justice Building
Albany, New York 12224

Judge Edward M. Murray
Court of Claims
State of New York
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Albany, New York 12224

Mr. Walter Broadnax
President of New York State
Civil Service Commission
State Campus Building #1
Albany, New York 12239

Mr. Robert Abrams
Office of Attorney General
The Capitol
Albany, New York 12224

Respectfully,

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appellant -counsel pro se
2816 8th Avenue
New York, New York 10039
Telephone: (212) 368-1732